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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

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11 MARCIANO PLATA, et al.,

12 *Plaintiffs,*

13 v.

14 ARNOLD SCHWARZENEGGER, et al.,

15 *Defendants.*
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Case No. C01-1351 TEH

**DECLARATION OF PAUL RAMSEY IN
SUPPORT OF RECEIVER'S
SUPPLEMENTAL REPORT RE
PHYSICIAN CLINICAL COMPETENCY
DETERMINATION POLICIES AND
PROCEDURES**

1 I, Paul Ramsey, declare as follows:

- 2 1. I am the Chief Administrative Law Judge for the State Personnel Board (hereinafter SPB)
3 responsible for the management of the Appeals Division. The Appeals Division employs
4 administrative law judges, analysts, and the requisite supervisory and support staff to
5 receive appeals from applicants to and employees within the State civil service system. In
6 particular, such include disciplinary actions taken against a state employee.
- 7 2. On June 4, 2008, members of the SPB Executive staff and representatives of the
8 Receiver's Office and the California Department of Corrections and Rehabilitation met to
9 discuss the future implementation of a process incorporating both physician peer review
10 and State civil service disciplinary procedures into a single hearing pursuant to the court's
11 May 23, 2008 order. SPB would have responsibility for implementation of this hearing
12 process.
- 13 3. Following the June 4, 2008, meeting, I contacted the Office of Administrative Hearings to
14 discuss relevant experience in conducting medical quality hearings for the Medical Board
15 of California in order to understand the complexity and workload demands associated
16 with such hearings. I also arranged for specialized training for SPB Administrative Law
17 Judges to address the requirements for conducting medical quality hearings to occur in
18 early August, 2008. The Appeals Division developed internal procedures to ensure
19 timely processing of medical quality hearings as contemplated in draft procedures
20 prepared by the Receiver's Office. Additionally, I contacted the Institute for Medical
21 Quality to discuss entering into a contract such that the Institute would recruit and
22 provide qualified physicians to conduct medical quality hearings as required by this
23 court's May 23, 2008 order.
- 24 4. On July 3, 2008, the Institute for Medical Quality delivered a draft Scope of Work to SPB
25 for review and consideration. Staff for the Institute also requested that SPB consider
26 agreeing to provide indemnification for any claims arising out of their participation in
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1 agreement with SPB. In turn, SPB provided an exemplar State contract containing
2 standard terms and conditions for the Institute's review and consideration.

- 3 5. During the week of July 14, 2008, the Fiscal Office for SPB contacted the Institute for
4 Medical Quality to obtain details identifying Institute staff having responsibility for
5 managing the proposed contract. A draft contract was completed and forwarded to the
6 SPB Legal Division for review.
- 7 6. On July 17, 2008, I provided a draft Implementation Plan to Linda Buzzini, attorney for
8 the Receiver's Office, for discussion at a meeting involving SPB Executive staff,
9 representatives of the Receiver's Office, representatives of the California Department of
10 Corrections and Rehabilitation, and representatives of the Union of American Physicians
11 and Dentists, scheduled for July 21, 2008. At that time, I informed Ms. Buzzini that
12 contract negotiations with the Institute for Medical Quality were continuing.
- 13 7. In telephone conversations with the Institute for Medical Quality held on July 17 and 18,
14 2008, the Institute informed me that additional time was required to create a pool of
15 qualified physicians peer review panels so that Medical Quality hearings could be
16 conducted. Also, the Institute would require eight weeks from date of notification to
17 create a panel to conduct a medical quality hearing. As a result of this information, the
18 draft Implementation plan was amended. The amended draft Implementation Plan was
19 delivered to Ms. Buzzini on July 21 in advance of the scheduled meeting.
- 20 8. At the July 21, 2008 meeting, the participants discussed the issues raised by the Institute
21 for Medical Quality. Both the Union and the Receiver's Office objected to an 8 week
22 period for the identification of qualified physicians to establish a peer review panel. I
23 informed the parties that this matter would be discussed further with the Institute.
24 Further, the Receiver's Office was asked whether the California Department of
25 Corrections and Rehabilitation or the Receiver's Office would provide indemnification to
26 the Institute. The parties were informed that the Board had decided not to provide
27 indemnification to the Institute. Ms. Buzzini replied in the negative to this request. Also,
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1 both the Union and the Receiver's Office clarified that while the number of appeals per
2 year would be approximately 30, it was estimated that six appeals would go to hearing.

3 9. In discussions with the Institute for Medical Quality on July 24, 2008, I was informed the
4 Institute did not consider the lack of an agreement by SPB to indemnify the Institute to be
5 a "deal breaker." Further, the Institute agreed to a 31 day period to identify qualified
6 physicians to establish a peer review panel.

7 10. On July 28, 2008, I provided Ms. Buzzini a revised Implementation Plan based upon the
8 meeting of July 21, 2008 and the discussions with the Institute for Medical Quality. All
9 training for SPB staff had been completed. The primary issues to be resolved involved
10 completing contracts with the Institute for Medical Quality, support from the Receiver's
11 Office for additional staff necessary to process medical quality hearings, and an
12 agreement with the Receiver's Office and the California Department of Corrections and
13 Rehabilitation for reimbursement for processing appeals involving medical quality issues.
14 Believing that appropriate support would be forthcoming from the Receiver's Office, the
15 plan provided that SPB would begin receiving and processing appeals from the California
16 Department of Corrections and Rehabilitation physicians concerning medical quality
17 actions and related employment discipline on October 13, 2008.

18 11. On August 8, 2008, I received a telephone call from Melinda Gonser at the California
19 Department of Corrections and Rehabilitation. She informed me that she was working
20 with the Institute for Medical Quality to establish a contract for so that physician peer
21 review panels would be established to work with the Office of Administrative Hearings
22 on a temporary basis while SPB establishes its medical quality hearing process. She
23 understood that SPB had established a process for retaining physicians as consultants to
24 conduct medical quality hearings and was seeking information so that her department
25 could proceed in the same fashion. I placed her in contact with the Assistant Chief of
26 SPB Administrative Services to facilitate their process. During this conversation, I also
27 learned that the California Department of Corrections and Rehabilitation agreed to
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1 indemnify the Institute under the agreement to create physician peer review panels. When
2 asked the reason for this, Ms. Gonser replied that the Receiver's Office ordered her
3 department to provide indemnification to the Institute.

4 12. On August 11, 2008, I discussed with Ms. Buzzini the need for SPB to establish one
5 additional administrative law judge and one additional legal secretary. I explained these
6 two additional positions would ensure that medical quality hearings could be conducted
7 without causing disruption to ongoing appeals not involving medical quality hearings.
8 Presently, the Appeals Division receives in excess of 200 evidentiary appeals per month.
9 Without the additional staff, existing resources would be required to vacate calendared
10 hearings so that 30 peer review panels could be established and voir dired and
11 approximately six medical quality hearings initiated within the 60 day time period
12 required by the medical quality hearing process. Further, the two additional positions are
13 required to ensure timely preparation of the decisions by both the peer review panel and
14 the administrative law judge for consideration by the Board within 45 days of the
15 submission of the case. Ms. Buzzini was also informed that the California Department of
16 Corrections and Rehabilitation would be billed for actual time expended working on a
17 medical quality hearing and not for the entire cost of the positions of the administrative
18 law judge and legal secretary. In particular, I informed Ms. Buzzini that SPB would bill
19 the administrative law judge at the rate of \$122 per hour as opposed to the \$187 per hour
20 rate charged by the Office of Administrative Hearings. The rate for a legal secretary
21 would be \$54 per hour. I also informed Ms. Buzzini that the billing rate for an appeals
22 assistant would be \$51 per hour and would be no more than ½ hour per case for the initial
23 creation of an appeal. Accordingly, SPB will not seek an additional appeals assistant.
24 Ms. Buzzini requested detailed costs for these billing rates. I informed Ms. Buzzini that I
25 would request the information from the SPB Fiscal Office.

26 13. On August 14, 2008, I forwarded the requested details for the billing rates for an
27 administrative law judge, legal secretary, and appeals assistant.

1 14. During the week of September 2, 2008, I learned from the Institute for Medical Quality
2 that they felt justified in requiring SPB to agree to indemnification because the California
3 Department of Corrections and Rehabilitation had agreed to the request. I informed the
4 Institute that I would renew my request that the California Department of Corrections and
5 Rehabilitation agree to provide the Institute indemnification through the SPB process as
6 well.

7 15. On September 5, 2008, having not heard from Ms. Buzzini regarding the billing rates and
8 related details, I contacted her to ask if she had any questions or concerns. I also asked if
9 her office had completed the final procedures for the medical quality hearing process.
10 Later that day, Ms. Buzzini replied that there were concerns regarding the 20% overhead
11 built into the billing rate. She requested information regarding this portion of the rate.
12 Ms. Buzzini also asked the status of reaching an agreement with the Institute for Medical
13 Quality. I responded that I would seek more information regarding the 20% overhead
14 from the SPB Fiscal Office. I also inquired that since her office directed the California
15 Department of Corrections and Rehabilitation to provide indemnification to the Institute,
16 perhaps this arrangement could be continued while SPB conducts medical quality
17 hearings.

18 16. On September 11, 2008, the SPB Fiscal Office provided me the justification for the 20%
19 overhead. In particular, the overhead pays for nearly all of the administrative support
20 provided to programs. I forwarded this information to Ms. Buzzini on September 11,
21 2008.

22 17. On the evening of September 11, 2008, Ms. Buzzini responded that she believed the
23 justification for the overhead was inadequate and requested more information. Ms.
24 Buzzini also requested that I contact her by telephone to discuss the question of
25 indemnification.

26 18. On September 12, 2008, I informed Ms. Buzzini that I was scheduled for meetings most
27 of the day and would try to contact her after 4:00 p.m. I telephoned Ms. Buzzini and left
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1 her a message after 4:00 p.m. I did not hear back from her before I left at approximately
2 5:30p.m.

3 19. On September 15, 2008, I telephoned Ms. Buzzini. During the telephone conversation, I
4 informed her that the SPB Fiscal Office had recently informed me that the calculations
5 used to arrive at the 20% overhead rate were now a number of years old. I also informed
6 her that the SPB Fiscal Office was tasked with the project of recalculating the rate for
7 overhead in light of the various program changes incurred by SPB in recent years and that
8 the prior calculations may no longer apply. Ms. Buzzini acknowledged the program of
9 conducting medical quality hearings involved support from SPB units such as personnel,
10 fiscal, IT, and business services. I then informed Ms. Buzzini that because the workload
11 associated with medical quality hearings is relatively small in comparison to the workload
12 for the entire SPB Appeals Division, I proposed to set the overhead rate between 5% and
13 10% until the new overhead rate is established. She agreed to this proposal and suggested
14 7.5% to which I agreed. I then asked Ms. Buzzini if the California Department of
15 Corrections and Rehabilitation could continue to provide indemnification for the Institute
16 for Medical Quality while SPB conducts medical quality hearings. I explained that the
17 Department's agreement with SPB would provide for indemnification for SPB and its
18 agents involved in medical quality hearings. SPB would then provide pass through
19 indemnification to the Institute in the agreement between themselves. Ms. Buzzini stated
20 she would discuss this with the Receiver and respond. As of today's date, Ms. Buzzini
21 has not provided a response to this inquiry.

22
23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Dated: September 19, 2008

/s/Paul Ramsey
Paul Ramsey

1 I hereby attest that I have on file all holograph
2 signatures for any signatures indicated by a
3 "conformed" signature (/s/) within this efiled
4 document.

5 /s/Bruce A. Monfross

6 Bruce A. Monfross
7 Attorney for California State Personnel Board
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CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On September 19, 2008, I served a copy of the following document(s):

**DECLARATION OF PAUL RAMSEY IN SUPPORT OF RECEIVER'S
SUPPLEMENTAL REPORT RE PHYSICIAN CLINICAL COMPETENCY
DETERMINATION POLICIES AND PROCEDURES**

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

— BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated below. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

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19 I declare that I am employed in the offices of a member of the State Bar of this Court at
 20 whose direction the service was made. I declare under penalty of perjury, under the laws of the
 20 united State of America, that the above is true and correct.

21 Executed on September 19, 2008 at San Francisco, California.

22 
 23 _____
 23 Lori Dotson